

12-1-2008

State v. Livas Respondent's Brief Dckt. 35301

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

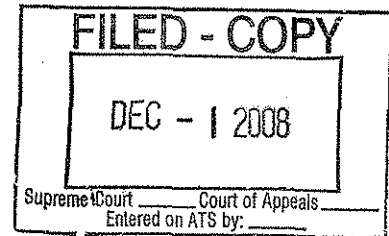
vs.

GILBERT LIVAS,

Defendant-Appellant.

NO. 35301

COPY



BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

HONORABLE MICHAEL J. REARDON, Magistrate Judge
HONORABLE CHERI C. COPSEY, District Judge

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State of Idaho

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Deputy Attorney General
Chief, Criminal Law Division

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ATTORNEYS FOR
DEFENDANT-APPELLANT

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 35301
)	
vs.)	
)	
GILBERT LIVAS,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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DEFENDANT-APPELLANT**

TABLE OF AUTHORITIES

CASES

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<u>State v. Rodriguez-Perez</u> , 129 Idaho 29, 921 P.2d 206 (Ct. App. 1996)	6
<u>State v. Young</u> , 136 Idaho 113, 29 P.3d 949 (2001).....	8

STATUTES

I.C. § 19-3501	6, 7
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addition, at counsels' request the Magistrate agreed to listen to the recordings [of the traffic stop]. On December 14, 2006, the State filed an additional response to the Motion and Livas responded on December 18, 2006.

The Magistrate denied the Motion to Suppress on December 27, 2006, in a written decision.

On January 4, 2007, at 4:45 p.m., Livas filed a lengthy Motion and Memorandum to Reconsider challenging the Magistrate's evidentiary findings and rulings. On February 2, 2007, the court clerk scheduled the Motion to Reconsider to be heard February 16, 2007, less than one month before the six months would run. At the hearing on February 16, 2006, Livas indicated he may want to file an interlocutory appeal. After the hearing, the parties filed additional briefing. Livas filed additional material on February 23, 2007, twenty-one days before the six months would run, and the State responded on March 2, 2007, just twelve days before the six months would run. Furthermore, in his February 23, 2007, brief at the end, Livas wrote as follows:

In the event the Court denies this Motion for Reconsideration, and does not disturb its Order of December 27, 2007, denying Mr. Livas' Motion to Suppress, *Mr. Livas requests that the Court stay this case in the event he determines to appeal the Court's ruling to the District Court pursuant to Idaho Criminal Rule 54.2.*

(Emphasis added.)

The Magistrate denied Livas' Motion on April 4, 2007, twenty-one days *after* the six month deadline. On May 2, 2007, pretrial was scheduled for June 22, 2007, and the trial set for July 24, 2007. Livas moved to dismiss for a violation of his statutory speedy trial rights on May 24, 2007, and the Magistrate denied the Motion at oral argument on June 22, 2007. Livas entered a conditional guilty plea and this appeal followed.

(R., pp.95-96.)¹ (Emphasis in original.)

¹ For ease of reference, the state has attached as Appendices to this brief: the ROA, the minutes from all relevant hearings, the transcript from the magistrate's hearing on the motion to dismiss, and the district court's order on appeal.

ISSUE

Livas states the issue on appeal as:

Whether the District Court erred in affirming the decision of the Magistrate Court, which held that because Mr. Livas filed a Motion to Suppress, he effectively applied to postpone his trial, thereby waiving his right to a speedy trial as provided in Idaho Code § 19-3501.

(Appellant's brief, p.4.)

The state wishes to rephrase the issue on appeal as:

Did the district court, in its appellate capacity, correctly conclude that the magistrate's findings of fact and conclusions of law were supported by substantial evidence and that the magistrate's conclusion – that Livas' statutory right to a speedy trial was not violated – followed from those findings?

Whether there was an infringement of a defendant's right to a speedy trial presents a mixed question of law and fact. State v. Clark, 135 Idaho 255, 257, 16 P.3d 931, 933 (2000). The appellate court defers to the trial court's findings of fact that are supported by substantial and competent evidence, but freely reviews the trial court's application of the law to the facts found. Id.

C. The District Court Correctly Concluded The Magistrate Court Properly Exercised Its Discretion When It Denied Livas' Motion To Dismiss

A misdemeanor case should be dismissed if not tried within six months of a defendant's not guilty plea, unless "good cause to the contrary is shown" or the trial was "postponed upon [the defendant's] application." I.C. § 19-3501(4). When a defendant who moves to dismiss his case pursuant to I.C. § 19-3501(4) shows that trial was not postponed at his request, the burden then shifts to the state demonstrate good cause for the court to decline to dismiss the case. State v. Rodriguez-Perez, 129 Idaho 29, 37, 921 P.2d 206, 215 (Ct. App. 1996).

"[G]ood cause means that there is a substantial reason that rises to the level of a legal excuse for the delay. Because there is not a fixed rule for determining good cause for delay of a trial, the matter is initially left to the discretion of the trial court." Clark, 135 Idaho at 260, 16 P.3d at 936 (citations omitted). *The trial court's discretion is not unbridled, however, and its decision is subject to independent review on appeal. Id.* Ultimately, "whether legal excuse has been shown is a matter for judicial determination upon the facts and circumstances of each case." Clark, 135 Idaho at 260, 16 P.3d at 936. This

correctly found that the magistrate's legal conclusion followed from its factual findings:

The State did not file the motions, Livas did. Livas raised important challenges to the admissibility of the evidence and had he won the motions, most likely the case would have been dismissed. The Motion to Suppress and Motion for Reconsideration postponed the trial, not once but twice. Furthermore, in his Motion for Reconsideration, Livas actually asked the Magistrate to stay his criminal case if he should decide to appeal.

By the time all the motions and supporting memoranda had been filed there were only twelve days before the six months would have run and the Magistrate's decision itself was not issued until twenty-one days *after* the six months had run. The Magistrate found that the delay was caused Livas' pretrial motions and that the amount of time the court took to resolve those motions was not excessive. This Court agrees. The need to resolve legitimate pretrial motions is "a substantial reason that rises to the level of a legal excuse for the delay." *State v. Clark*, 135 Idaho, 255, 260, 16 P.3d 931, 936 (2000).

The analysis of whether there was "good cause" is not simply a determination of who was responsible for the delay and how long the case has been pending. Rather, the analysis focuses upon the reason for the delay and whether there is "a substantial reason that rises to the level of a legal excuse for the delay." In this case the trial was delayed beyond the six-month period because Livas filed important pretrial motions that may have resolved the case. By upholding the trial court's ruling that Livas' motions amounted to an application for postponement or "good cause" this does not affect a defendant's constitutional right to challenge the admissibility of evidence as suggested by Livas. It simply means that if the defendant does move to suppress or files pretrial motions, he cannot use those to delay trial and then assert speedy trial as a sword.

(R., p.99.) As noted by the district court, Livas' motions acted as his application for postponement but also as the reason for the delay. Comparing the Supreme Court's holding in *State v. Young*, 136 Idaho 113, 29 P.3d 949 (2001), that the state's legitimate, good faith attempt at an interlocutor appeal rose to the level of

APPENDIX A

Date: 7/2/2008
Time: 02:50 PM

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

ROA Report

Page 1 of 3

Case: CR-MD-2006-0012194 Current Judge: Michael Reardon

Defendant: Livas, Gilbert Jr

State of Idaho vs. Gilbert Jr Livas

Date	Code	User		Judge
9/11/2006	NEWC	ID	Case Created	Michael Reardon
		ID	Case Opened	Michael Reardon
	ARRN	ID	Video Arraignment - 09/11/2006	Michael Reardon
	CHAD	ID	Charge number 1: Charge Booked by ACSO - -Citation B 253112	Michael Reardon
		ID	Charge number 1: Finger Print Card# Added - 0085066	Michael Reardon
	BSET	ID	Charge number 1: Bond Set at - 500	Michael Reardon
		14	Charge number 1: Bonded Posted - 500	Michael Reardon
		14	Charge number 1: Type of Bond Posted - - CASH	Michael Reardon
		14	Charge number 1: Bonded By - PAID CASH	Michael Reardon
		CW	Bond Out Clerk Appearance - 09/25/06 Thru - 10/02/2006	Michael Reardon
9/14/2006		AS	LOA/NG/JT - /Nevans	Michael Reardon
		AS	Invocation of Rights	Michael Reardon
	RESA	AS	Defendant Request For Discovery	Michael Reardon
9/15/2006	JTSC	WM	Jury Trial Set - 11/06/2006	Michael Reardon
	HRSC	WM	Event Scheduled - Pre-Trial Conference - 10/10/2006	Michael Reardon
9/26/2006		CS	State/City Request for Discovery	Michael Reardon
	REQD	CS	State/City Response to Disc. Req.	Michael Reardon
10/6/2006	RESA	CS	Defendant Response to Disc. Req.	Michael Reardon
10/10/2006		CS	Affidavit of Michelle Points	Michael Reardon
	MOTN	CS	Motion - to Suppress	Michael Reardon
		CS	Memo in Support	Michael Reardon
	CONT	AH	Pre-Trial Conference	Michael Reardon
10/11/2006	NOTC	SR	Notice - of Hearing	Michael Reardon
	HRSC	SR	Event Scheduled - Hearing - 11/29/2006	Michael Reardon
11/16/2006	JTSC	AH	Jury Trial Set - 12/12/2006	Michael Reardon
11/20/2006		SR	State's Response to Defend's Motion to Suppress	Michael Reardon
11/29/2006	HRSC	AH	Event Scheduled - Hearing - 12/11/2006	Michael Reardon
12/11/2006		AH	Hearing	Michael Reardon
12/14/2006		KS	Additional Response to Motion to Suppress	Michael Reardon
12/18/2006		SG	Supplemental Memo in Support of Motion to Suppress	Michael Reardon
12/27/2006	ORDR	AH	Order - Re: Motion to Suppress Motion Denied	Michael Reardon

00003

Date: 7/2/2008

4rth Judicial District Court - Ada Cour.

User: CCTHIEBJ

Time: 02:50 PM

ROA Report

Page 2 of 3

Case: CR-MD-2006-0012194 Current Judge: Michael Reardon

Defendant: Livas, Gilbert Jr

State of Idaho vs. Gilbert Jr Livas

Date	Code	User		Judge
1/4/2007	MOTN	SR	Motion - & Memo in Support of Motion for Reconsideration	Michael Reardon
2/1/2007	NOTC	KM	Notice - of Address Change of Counsel	Michael Reardon
2/2/2007	HRSC	MI	Event Scheduled - Hearing - 02/16/2007	Michael Reardon
2/16/2007		KM	Hearing	Michael Reardon
2/23/2007		SR	Supplemental Authorities on Motion for Reconsideration	Michael Reardon
3/2/2007		CS	State's Response to Defendant's Motion for Reconsideration	Michael Reardon
5/1/2007	JTSC	CT	Jury Trial Set - 07/24/2007	Michael Reardon
	HRSC	CT	Event Scheduled - Pre-Trial Conference - 06/22/2007	Michael Reardon
5/15/2007	JTSC	CT	Jury Trial Set - 07/24/2007	Michael Reardon
	HRSC	CT	Event Scheduled - Pre-Trial Conference - 06/22/2007	Michael Reardon
5/24/2007	MOTN	SG	Motion - to Dismiss	Michael Reardon
		SG	Memo in Support	Michael Reardon
6/11/2007		SB	Spanish Interpreter	Michael Reardon
6/22/2007	CONT	CT	Pre-Trial Conference	Michael Reardon
		CT	Case Unresolved/Stay on JT for Trial	Michael Reardon
7/17/2007	NOTC	SG	Notice - Of Association Of	Michael Reardon
7/24/2007		CT	Case Resolved	Michael Reardon
	HRSC	CT	Event Scheduled - Sentencing Hearing - 09/14/2007	Michael Reardon
	SENT	CT	Sentence Hearing	Michael Reardon
	WHJD	CT	Charge number 1: Withheld Judgment Entered	Michael Reardon
	SNPF	CT	Charge number 1: Sentenced to Fine & Costs - \$837.50	Michael Reardon
	SNIC	CT	Charge number 1: Sentenced to Jail - 5d 1d cr Consecutive	Michael Reardon
	PROB	CT	Charge number 1: Placed on Probation - 12m Standard Terms 16HRS ALCOHOL PROGRM	Michael Reardon
		CT	D/L Suspension- Judgment	Michael Reardon
7/26/2007			Finger Print Card# Sent to BCI - 0100085066	Michael Reardon
7/27/2007			Charge number 1: Disposition reported to D.O.T. - B 1253112 E	Michael Reardon
7/31/2007	NOTC	KP	Notice - Of Appeal	Michael Reardon

00004

APPENDIX B

CJ3BMIN
CCHUNTAM

ADA COUNTY MAGISTRATE MINUTES

10/04/2006
12:50:14

SCHEDULED EVENT:
Pre-Trial Conference

JUDGE:
William Harrigfeld

CLERK:
A. Hunt

DATE: 10/10/2006 TIME: 14:45

COURT REPORTER:

TAPE NO:

PR/AGY: BC

PROS:

Denyse Urdiaz
ED./ATTORNEY Michelle Points

LIVAS GILBERT JR

M0612194.01

SSN

DOB

1 DUI DRIVIN S 18 8004

M

Case Called Def: Present Not Pres. In Custody
Advised of Rights Waived Rts PD Appointed Waived Atty
Guilty Plea/PV Admit N/G Plea Advise Subsq Penalty
Bond \$ ROR Pay/Stay Payment Agr

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Arg Impaired
Mike Smith Intersp.
15/11/11
Cash Bond

Moth to Supress sets

11/1 @ 11:30 a

M. Points to notice

Reset JT in Dec.

Call & send notice

* Finish () Release Defendant

00012

APPENDIX C

CJ3BMIN
CCHUNTAM

ADA COUNTY MAGISTRATE MINUTES

11/17/2006
15:39:16

SCHEDULED EVENT:
Hearing

JUDGE:
William Harrigfeld

CLERK:
A. Hunt

DATE: 11/29/2006 TIME: 10:00

COURT REPORTER:

TAPE NO:

PR/AGY: BC

PROS:

Laurie F.

P.D./ATTORNEY

M. Pointes

LIVAS GILBERT JR

M0612194.01

SS

DOB

1 DUI DRIVIN S 18 8004

M

Case Called Def: ☒ Present ☐ Not Pres. ☐ In Custody
☐ Advised of Rights ☐ Waived Rts ☐ PD Appointed ☐ Waived Atty
☐ Guilty Plea/PV Admit ☐ N/G Plea ☐ Advise Subsqt Penalty
☐ Bond \$ ☐ ROR ☐ Pay/Stay ☐ Payment Agr

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* Finish () Release Defendant

00022

APPENDIX D

CJ3BMIN
TCMCCUUKM

ADA COUNTY MAGISTRATE MINUTES

2/16/2007
11:00:36

SCHEDULED EVENT:
Hearing

JUDGE:
William Harrigfeld

CLERK:
Kristi McCurry

DATE: 02/16/2007 TIME: 16:00

COURT REPORTER:

TAPE NO:

PR/AGY: BC

PROS:

P.D./ATTORNEY

LIVAS GILBERT JR

M0612194.01

SSI

DOB

1 DUI DRIVIN S 18 8004

M

Case Called Def: ☒ Present ☐ Not Pres. ☐ In Custody
☐ Advised of Rights ☐ Waived Rts ☐ PD Appointed ☐ Waived Atty
☐ Guilty Plea/PV Admit ☐ N/G Plea ☐ Advise Subsq Penalty
☐ Bond \$ ☐ ROR ☐ Pay/Stay ☐ Payment Agr

Motion for Reconsideration

160213 Δ° Argue's points
161055 St argues points
161844 Rebuttal

Judge allows 1 week for Δ° + St
to supply him w/ paperwork

May want interlocutory Appeal

00044

* Finish () Release Defendant

APPENDIX E

245
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

GILBERT LIVAS,

Defendant.

)
)
) Case No. M0612194
)
)

ORIGINAL

)
)
) MOTION TO DISMISS
) HEARING TRANSCRIPT
)

NO. _____

A.M. _____

FILED
P.M. *4*

AUG 14 2007

J. DAVID NAVARRO, Clerk

By *[Signature]*

BEFORE THE HONORABLE MICHAEL J. REARDON

DEPUTY

MAGISTRATE JUDGE

JUNE 22, 2007

APPEARANCES

For the State:

ADA COUNTY PROSECUTOR'S OFFICE

By: Gabriel J. McCarthy, Esq.

200 West Front Street, Room 3191

Boise, Idaho 83702

For the Defendant:

HAWLEY, TROXELL, ENNIS, &

HAWLEY, LLP

By: Michelle R. Points, Esq.

887 West Main Street, Suite 1000

Boise, Idaho 83702

PC

State of Idaho v. Gilbert Livas

Page 3

Boise, Idaho, Friday, June 22, 2007

PROCEEDINGS

THE COURT: This is Case No. M0612194. We are here on the Motion to Dismiss filed by Ms. Points. We had a brief in chamber conference on the motion. We talked about the procedural history of the case.

Ms. Points, I'll hear your argument.

MS. POINTS: Thank you, Your Honor.

As the Court is aware, this motion is brought pursuant to Idaho Code 19-3501, which provides that after the entry of a plea, there is six months in which to have the case tried, unless good cause is shown. And I guess the issue here today is what constitutes good cause.

In the briefing, Your Honor, I have outlined a few cases where the Idaho Supreme Court and the Court of Appeals have addressed the issue of what constitutes good cause, and I think those cases are very instructive. Those cases are State v. Clark and State v. Young.

As the Court is likely aware, there is a Supreme Court case referred to as the Barker case, and that case considered factors in which a defendant could argue violation of speedy trial and cases where that's

Page 5

The Supreme Court held that that was a legal excuse, given the fact that in the event it was found that the evidence should not have been suppressed, and the defendant was acquitted, he could not then again be retried. Only that measure gave rise to a legal excuse. However, back to State v. Clark, witness availability, court congestion, things of that nature, do not constitute a legal excuse under the relevant statute. The statute gives more protection than does the U.S. Constitution and the State constitution.

The factual record in the case, Your Honor, is that on September 14th of 2006, Mr. Livas filed a not guilty plea. That would start the clock of six months saying the Court should hold the trial by March 14th of 2006.

Quite rapidly, Mr. Livas filed a Motion to Suppress, and I won't hash out what the nature of that Motion to Suppress was, but at the pretrial conference, the same day the Motion to Suppress was filed, October 10th, 2006, and the Court suggested that the court trial be vacated allowing him enough time to hear the Motion to Suppress. There was no notice of trial setting at -- issued after that time to timely set the court trial.

The Motion to Suppress was heard, and on December 27th, 2006, the Court entered an order denying

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appropriate. The Idaho Supreme Court specifically found that -- there should not be consideration of the Barker factors in a State case, unless there is an illegal excuse established by the State in not bringing a case against the defendant.

And I've also briefed in the memorandum, Your Honor, the duty to bring a defendant to trial lies with the State, not the defendant.

The two cases that I've briefed, State v. Clark and State v. Young, the first was a case that is somewhat similar to ours in which there was some court congestion, some court reasons for the trial not going within a six-month period of time, and the prosecution also argued that witnesses were not available.

That went up to the Supreme Court, and they found that that was not a legal excuse. The defendant did not waive his speedy trial rights, and that did not constitute a legal excuse under the 19-3501.

Again, in the State v. Young, this was a case that involved child sexual abuse, and the Court had granted a motion to suppress certain evidence that was quite telling of what had happened. And the State requested that they take an interlocutory appeal on that, and the Court granted that, which pushed the case back past the six months.

Page 6

the Motion to Suppress. Within a week, we filed a Motion for Reconsideration, and that was held -- that was heard on February 16th, 2007, still within 30 days of the six months. We could have had trial any time between the time the first trial was vacated and March 14th of 2007, but there was no notice issued.

Mr. Livas along this -- during this case, has made every effort to move the case along expeditiously. As I'm sure you can see from the record, we've timely filed the Motion to Suppress, the Motion for Reconsideration within a week, and that was heard, accordingly to the court schedule. At no time during the court trial -- or during these proceedings, did the Court or the State inquire whether Mr. Livas intended to or wanted to waive his speedy trial rights or his rights under 19-3501.

Nothing precluded the Court from issuing a notice of trial setting from the time first trial setting of vacated. In fact, Your Honor, it would have been most appropriate to issue a notice of trial setting after the first Motion to Suppress was denied. And at no time was a trial setting set.

Nothing precluded the State from requesting that the Court issue a notice of trial setting that the matter be set within the time allowed under the statute.

1 (Pages 3 to 6)

June 22, 2007

State of Idaho v. Gilbert Livas

Page 11

1 this case.

2 In Young, Your Honor, I think that that case
3 does have some similarities, that there was a delay
4 caused at the trial level by sorting out evidentiary
5 issues, and that was good cause. And in that case, that
6 delay was at the State's -- on the State's motion, that
7 the State caused the procedural delay to hear the
8 evidentiary issues and to take the interlocutory appeal.
9 And even at the State's behest, that was good cause.

10 In this case, you have the same kinds of
11 delays, but the defendant's request is even more in
12 favor of the State. We fall comfortably on the other
13 side of the Young holding. In the Young holding, the
14 bottom line is that good cause was found, Your Honor, so
15 that case squarely supports the State. No problem to
16 citing that case or having the Court look at that case
17 at all.

18 Your Honor, the defendant's constitutional
19 speedy trial rights are -- you know, the Barker v window
20 for part balancing, I believe is still intact. I mean,
21 if we were to have some unreasonable delay for the next
22 year because the State had every witness go on vacation
23 for every court trial set from here on out, the Court
24 would be free to dismiss on constitutional grounds, but,
25 Your Honor, the State has not requested a continuance

Page 12

1 once in this case. The delay so far has been because
2 the defendant has wanted to raise these issues. The
3 issues have been heard, and now we're a little bit
4 outside that timeframe.

5 Your Honor, I think that it is pretty safe to
6 say that the facts in this case indicate that legal
7 excuse does exist.

8 Thank you.

9 THE COURT: Thank you. In 19-3501, subsection 4,
10 of that statute, the Court, unless good cause is shown,
11 must order the dismissal if a defendant is charged with
12 a misdemeanor, is not brought to trial within six months
13 from the date he entered a plea of not guilty, and if
14 the case has not been postponed upon his application.
15 So clearly, Mr. Livas has not been brought to trial
16 within six months of the entry of the plea. But
17 effectively, the trial has been postponed upon his
18 application.

19 He may have -- I'm not sure if it is a
20 constitutional right to bring a suppression motion. He
21 certainly has a procedural right to bring a suppression
22 motion when there's a constitutional violation alleged,
23 but I'm not aware of any case law that extends or
24 shortens the time -- hamstringing the State, essentially,
25 under 19-3501, by the exercise of the defendant's

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1 procedural right to bring a motion.

2 Defined otherwise, it would seem to me would
3 open the door for defendants in all cases simply to file
4 motions that had the effect of extending the proceeding
5 beyond a defendant's speedy trial right, and then
6 claiming the rights of speedy trial was violated.

7 And while I appreciate that there are
8 dishabille issues that needed be resolved, the State did
9 not ask for a continuance. There was a trial date set
10 well within the six-month period, and the only reason
11 that it was reset was because the defendant filed a
12 Motion to Suppress.

13 And I agree that had that motion been
14 resolved, and it was resolved within ample time to reset
15 the defendant's trial within the six months, but the
16 Motion to Reconsider was filed -- which necessarily
17 requires additional time to be heard and to be briefed,
18 and Judge Harrigfeld provided additional time for that
19 to be heard and briefed.

20 I don't think it's unusual or excessive where
21 the last supplemental authority that was submitted by
22 the State, I believe, on March 2nd of 2007, followed by
23 a decision that was issued by Judge Harrigfeld on June
24 30th -- I don't think that that's an extraordinary delay
25 for the Court to cause in responding to a supplemental

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1 motion.

2 And of course, by that time -- it is
3 unrealistic to expect that the trial could have been set
4 within two weeks after the last supplemental brief was
5 allowed, I think.

6 So, I mean, first of all, I'm not sure that
7 the defense has reached the second prong of the inquiry
8 that the trial wasn't delayed or postponed upon their
9 application effectively. And I believe it was. And if
10 I were to find otherwise, I think that there is good
11 cause given the delay and the fact that I haven't heard
12 anything about prejudice. There has been no
13 conversation about how this has affected the defendant's
14 right to receive a fair trial.

15 And I think for all of those reasons, I don't
16 think that dismissal is appropriate under these
17 circumstances. I am going to deny the motion,
18 Ms. Points.

19 Do you know where we are in terms of -- are we
20 going to trial on the 24th of July?

21 MS. POINTS: No. I anticipate that we will
22 negotiate with the State.

23 THE COURT: Okay. So -- well, I'm going to leave
24 it on for trial --

25 MS. POINTS: Okay.

3 (Pages 11 to 14)

June 22, 2007

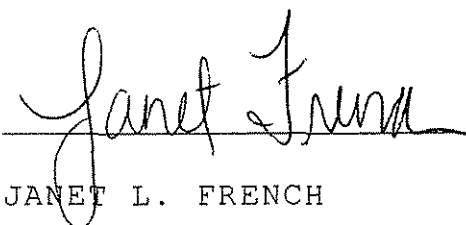
CERTIFICATE OF TRANSCRIPTION

I, Janet L. French, hereby certify:

That I correctly and accurately transcribed and typed the above transcript from the audiorecording of the Hearing, which was recorded on June 22, 2007; that the foregoing pages are a true and correct record of that proceeding, to the extent that the audiorecording from which it was transcribed was **audible** and **discernible**.

Dated and certified on this 13th day of August, 2007.

TRANSCRIBER



JANET L. FRENCH

ADA COUNTY COURTHOUSE

200 WEST FRONT STREET

BOISE, IDAHO 83702

APPENDIX F

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

APR 02 2008

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

STATE OF IDAHO

Plaintiff-Respondent,

vs.

GILBERT LIVAS

Defendant-Appellant.

Case No. H0701013

DECISION ON APPEAL

This matter is before the Court as an Appeal from the Magistrate's denial of a Motion to Suppress, Motion for Reconsideration and Motion to Dismiss.

The Court heard oral argument on March 27, 2008, and the Court considered the matter fully submitted on March 28, 2008.

For the reasons set forth below, the Court affirms the trial court's denial of the Motion to Suppress, Motion for Reconsideration and Motion to Dismiss. The Court remands for further proceedings consistent with this decision.

FACTUAL AND PROCEDURAL BACKGROUND

On September 9, 2006, at approximately 2:50 a.m., Officer White, Boise Police Department, stopped Gilbert Livas Jr. for traveling 60 m.p.h. in a 55 m.p.h. zone. Livas was driving on Boise's outbound connector heading away from the downtown area. The Magistrate listened to the recording and found that as Officer White approached Livas' car, the following exchange took place:¹

Officer White: Hello Sir, do you have your driver's license and insurance?

Livas: Yes, I do.

Livas: I need to tell you that I am deaf, ok so, I have to read lips, to talk to you. Here you go.

¹ The file contains both a recording of the traffic stop, and a transcript of the recording. Both are attached to the Affidavit of Michelle R. Points dated October 10, 2006. Livas contested the completeness of the transcript and, therefore, for the purpose of the Motion to Suppress, the Magistrate listened to the recording and did not read the transcript.

unjustifiably expanding the investigation of the initial traffic stop. The issue that this court is concentrating on is whether or not the expansion of the initial traffic stop by asking whether the defendant had anything to drink that night, and thereafter further investigating the defendant for driving under the influence, was an unlawful expansion of the initial stop?

There is no issue as to the initial stop of the defendant. The Officer had probable cause to stop the defendant for violating the law in exceeding the posted speed limit.

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. Stopping an automobile and detaining its occupants constitutes a "seizure" even if the purpose of the stop is limited and the detention quite brief. *Delaware v. Prouse*, 440 U.S. 648, 653, (citations omitted). When such a stop is made for purposes of investigating possible criminal activity, it must be based upon specific articulable facts which warrant a suspicion that the person detained has been or is about to be engaged in criminal activity. (citations omitted)

State v. Reed, 129 Idaho 503, 927 P.2d 863. The parties are in agreement . . . the defendant was legally stopped for violating the posted speed limit. The Court in *Reed* goes on and states:

The elements of detention, if reasonably prolonged after the justification for the detention has dissipated, may become an unreasonable seizure which is objectionable under the fourth amendment. *Id.* at 505.

The Idaho Appellate Court goes on and defines reasonable suspicion as follows:

The reasonable suspicion standard requires less than probable cause, but more than speculation or instinct on the part of the officer. *State v. Emory*, 119 Idaho 661, 664 (Ct.App. 1991) 809 P.2d 522.

The issue this court believes is before it is whether or not the officer had more than speculation or instinct causing his expansion of the stop. The issue this Court is focusing on is well laid out in *State v. Gutierrez*, 137 Idaho 647 (Ct.App. 2002) which states:

The United States Supreme Court has stated that an investigative detention "must be temporary and last no longer than necessary to effectuate the purpose of the stop." (citations omitted) *Id.* at 651.

The defendant, through extensive briefing and through oral argument, has not at any time claimed that the officer expanded the time of the stop by asking the defendant if he had anything to drink that night. The officer

additional time to be heard and to be briefed, and Judge Harrigfeld provided additional time for that to be heard and briefed.

I don't think it's unusual or excessive where the last supplemental authority that was submitted the State, I believe, on March 2nd of 2007, followed by a decision that was issued by Judge Harrigfeld on June 30th –² I don't think that that's an extraordinary delay for the Court to cause in responding to a supplemental motion.

And of course, by that time – it is unrealistic to expect that the trial could have been set within two weeks after the last supplemental brief was allowed, I think.

So, I mean, first of all, I'm not sure that the defense has reached the second prong of the inquiry that the trial wasn't delayed or postponed upon their application effectively. And I believe it was. And if I were to find otherwise, I think that there is good cause given the delay and the fact that I haven't heard anything about prejudice. There has been no conversation about how this has affected the defendant's right to receive a fair trial.

And I think for all of those reasons, I don't think that dismissal is appropriate under these circumstances. I am going to deny the motion[.]

On July 24, 2007, Livas entered a conditional guilty plea reserving the right to appeal. On July 31, 2007, Livas appealed regarding the denial of his Motion to Suppress, Motion to Reconsider, and Motion to Dismiss. On November 14, 2007, Livas filed his Appellant's Brief. On December 27, 2007, the State responded and on January 10, 2008, Livas replied. The Court heard oral argument March 27, 2008.

STANDARD OF REVIEW

This appeal is being heard as an appellate proceeding. I.R.C.P. 83(b). Review of the lower court's decision is limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law. *Benninger v. Derifield*, 142 Idaho 486, 488-489, 129 P.3d 1235, 1237-1238 (2006) (citing *Alumet v. Bear Lake Grazing Co.*, 119 Idaho 946, 812 P.2d 253 (1991)). A trial court's findings of fact in a court tried case will be liberally construed on appeal in favor of the judgment entered, in view of the trial court's role as trier of fact. *Lindgren v. Martin*, 130 Idaho 854, 857, 949 P.2d 1061, 1064 (1997); *Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118, 794 P.2d 1389, 1391 (1990).

² The Magistrate actually signed the Order Denying Motion for Reconsideration on March 30, 2007, and the clerk filed the Order on April 4, 2007.

committed or is about to commit a crime. *State v. Silva*, 134 Idaho 848, 852, 11 P.3d 44, 48 (Ct. App. 2000) (citations omitted). Livas concedes the stop was proper. However, he contends that the officer expanded the scope of the investigation by asking him how much he had been drinking.

However, an investigative detention must be temporary and last no longer than necessary to effectuate the purpose of the stop. *State v. Roe*, 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct.App. 2004); *State v. Parkinson*, 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct.App. 2000). Where a person is detained, the scope of detention must be carefully tailored to its underlying justification. *Id.* In this regard, a lawful detention can become unlawful if it is prolonged beyond the time reasonably required to complete the mission which justified the initial detention. *Muehler v. Mina*, 544 U.S. 93, 101 (2005); *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Brief inquiries not otherwise related to the initial purpose of the stop do not necessarily violate a detainee's rights. *Parkinson*, 135 Idaho at 362, 17 P.3d at 306 (citing *United States v. Shabazz*, 993 F.2d 431, 436 (5th Cir. 1993)). If it does not lengthen the stop, an officer may ask questions unrelated to the purpose of the traffic stop and may perform a dog sniff of a car. *Parkinson*, 135 Idaho at 363, 17 P.3d 307; see also *State v. Aguirre*, 141 Idaho 560, 112 P.3d 848 (Ct. App. 2005).

As stated in *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968), the determination of whether an investigative detention is reasonable requires a dual inquiry--(1) "whether the officer's action was justified at its inception" and (2) "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Here, Livas does not contest the basis for the stop. Thus, the Court need address only the second prong of this inquiry, whether Officer White's questioning was reasonably related in scope to the circumstances which justified the traffic stop.

The purpose of the stop is not fixed at the time the stop is initiated. *Parkinson*, 135 Idaho at 362, 17 P.3d 306. As the Court of Appeals recognized:

[A]ny routine traffic stop might turn up suspicious circumstances, which could justify an officer asking questions unrelated to the stop. The officer's observations, general inquiries, and events succeeding the stop may--and often do--give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer.

State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct.App.1990).

The Ninth Circuit also recently considered an argument similar to that advanced by Livas – that expanded questioning must be supported by separate reasonable suspicion. *United States v. Mendez*, 476 F.3d 1077 (9th Cir. 2007). In that case, the Ninth Circuit held that, so long as the traffic stop was not prolonged by the questions, expanded questioning during a traffic stop need not be supported by separate reasonable suspicion.

Therefore, the Court finds that the Magistrate properly denied the Motion to Suppress and affirms the Magistrate. Likewise, Livas raised no new arguments on reconsideration and the Court affirms the Magistrate's denial of reconsideration.

B. The Magistrate properly denied the Motion to Dismiss.

Livas also contends the Magistrate, the Honorable Judge Michael Reardon, improperly denied his Motion to Dismiss. He argues that the Magistrate improperly found good cause for his trial being scheduled four months beyond the six month statutory period. Livas moved to dismiss for a violation of his statutory speedy trial rights and the Magistrate denied his Motion. Livas does not raise a constitutional challenge to the delay.

The relevant facts are undisputed. On September 14, 2006, Livas pled not guilty and demanded his trial be set within the statutory speedy trial period, i.e., prior to March 14, 2007. A jury trial was scheduled for November 6, 2006, well within his speedy trial rights and a pre-trial conference set for October 10, 2006.

On October 10, 2006, Livas moved to suppress all of the evidence. Livas gave notice that his Motion would be heard November 29, 2006, and his memorandum in support was 15 pages long.

On November 16, 2006, in chambers with all counsel present, the trial court reset the trial to begin December 12, 2006, again well within his speedy trial rights. The State filed its opposition to the Motion on November 20, 2006. On November 29, 2008, the date originally set for the evidentiary hearing on the Motion to Suppress, the parties met in chambers, and the court reset the evidentiary hearing to December 11, 2006, the day before the scheduled trial.

At the same meeting, the Magistrate vacated the trial. There is no record as to why the court vacated the trial or why he rescheduled the hearing. However, it is clear that the trial, originally set for November 6, 2006, and reset to December 12, 2006, would

the prosecution to demonstrate good cause for the court to decline to dismiss action. I.C. § 19-3501; *State v. Rodriguez-Perez*, 129 Idaho 29, 921 P.2d 206, pet. for rev. den. (1996). I.C. § 19-3501(4) provides in relevant part as follows:

The court, *unless good cause to the contrary is shown*, must order the prosecution or indictment to be dismissed . . .

(4) [i]f a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

On September 14, 2006, Livas pled not guilty and demanded a speedy trial. Thus, statutorily, his trial should have been held before March 14, 2007. Therefore, because Livas' trial was not held within the six month period, the trial court was required to dismiss Livas' prosecution unless there was "good cause" shown for the delay, or Livas' actions caused his trial to be postponed. Whether there was an infringement of a defendant's right to speedy trial presents a mixed question of law and fact. *State v. Clark*, 135 Idaho 255, 257, 16 P.3d 931, 933 (2000). The Court defers to the trial court's findings of fact if supported by substantial and competent evidence; however, the Court exercises free review of the trial court's conclusions of law. *Id.*

Under I.C. § 19-3501, criminal defendants are given additional protection beyond what is required by the United States and Idaho Constitutions. *Clark*, 135 Idaho at 258, 16 P.3d at 934. Idaho Code Section 19-3501 mandates that, unless the state can demonstrate "good cause" for a delay greater than six months, the court must dismiss the case. "[G]ood cause means that there is a substantial reason that rises to the level of a legal excuse for the delay." *Clark*, 135 Idaho at 260, 16 P.3d at 936. "Thus, the ultimate question of whether legal excuse has been shown is a matter for judicial determination upon the facts and circumstances of each case." *Clark*, 135 Idaho at 260, 16 P.3d at 936. The analysis should not focus on who caused the delay. Rather, the analysis should focus upon the *reason* for the delay. *Id.*

In addition to the reason for the delay, the Court may consider the following factors *insofar as they bear on the sufficiency or strength of the reason for the delay*: (1) the length of the delay; (2) whether the defendant asserted the right to a speedy trial; and (3) the prejudice to the defendant. *State v. Hernandez*, 136 Idaho 8, 27 P.3d 417 (Ct. App.

Livas argues he did not request that the Magistrate postpone the trial; the Magistrate did so *sua sponte* after Livas moved to suppress evidence. Livas asserts that the Magistrate's ruling amounts to the proposition that "if a defendant brings a motion to suppress (or any pretrial motion for that matter), that defendant effectively waives his right to speedy trial." Livas argues that opting to exercise one right does not equate to a waiver of another. While Livas argues that he is being asked improperly to choose between exercising a constitutional right to move to suppress evidence for an alleged violation of the Fourth Amendment and exercising his statutory right to speedy trial, that is not true.

The Court finds that Livas' Motion clearly caused the delay in setting his trial. The State did not file the motions, Livas did. Livas raised important challenges to the admissibility of the evidence and had he won the motions, most likely the case would have been dismissed. The Motion to Suppress and Motion for Reconsideration postponed the trial, not once but twice. Furthermore, in his Motion for Reconsideration, Livas actually asked the Magistrate to stay his criminal case if he should decide to appeal.

By the time all the motions and supporting memoranda had been filed there were only twelve days before the six months would have run and the Magistrate's decision itself was not issued until twenty-one days *after* the six months had run. The Magistrate found that the delay was caused by Livas' pretrial motions and that the amount of time the court took to resolve those motions was not excessive. This Court agrees. The need to resolve legitimate pretrial motions is "a substantial reason that rises to the level of a legal excuse for the delay." *State v. Clark*, 135 Idaho 255, 260, 16 P.3d 931, 936 (2000).

The analysis of whether there was "good cause" is not simply a determination of who was responsible for the delay and how long the case has been pending. Rather, the analysis focuses upon the reason for the delay and whether there is "a substantial reason that rises to the level of a legal excuse for the delay." In this case, the trial was delayed beyond the six-month period because Livas filed important pretrial motions that may have resolved the case. By upholding the trial court's ruling that Livas' motions amounted to an application for postponement or "good cause," this does not affect a defendant's constitutional right to challenge the admissibility of evidence as suggested by Livas. It simply means that if the defendant does move to suppress or files pretrial motions, he cannot use those to delay trial and then assert speedy trial as a sword.

The Court shares the Magistrate's concern that following Livas' reasoning, defendants could simply to file motions that had the effect of extending the proceedings beyond a defendant's statutory speedy trial right, and then claim his speedy trial right was violated. Surely a defendant cannot be allowed to artificially extend the proceedings prior to trial and then move for dismissal because the State and the court did not provide a trial within the required time frame.


Therefore, the Court affirms the Magistrate's Order denying Livas' Motion to Dismiss on the basis there was good cause for the delay.

CONCLUSION

Based on the above, the Court affirms the trial court's denial of the Motions to Suppress, Reconsider and Dismiss. The Court remands for further proceedings consistent with this decision.

IT IS SO ORDERED.

DATED this 1st day of April 2008.



Cheri C. Copsey
District Judge

